

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
REX A. COVERSTONE) CASE NO. 05-12160
)
Debtor)

DECISION AND ORDER

At Fort Wayne, Indiana, on November 3, 2005

The motions to avoid judicial liens in exempt property filed by the debtor on August 18, 2005 are DENIED, without prejudice, because the movant has failed to allege sufficient facts to state a cognizable claim for lien avoidance pursuant to §522(f)(1). See, In re Wall, 127 B.R. 353, 355 (Bankr. E.D. Va. 1991). Unlike adversary proceedings which contemplate notice pleading, motions initiating contested matters are required to state the grounds for relief “with particularity.” See, Fed. R. Bankr. P. Rule 9013.

Not every judicial lien upon exempt property may be avoided. Lien avoidance pursuant to §522(f)(1) is available only where the judicial lien impairs a claimed exemption. The concept of impairment was reduced to a mathematical formula by the amendments to §522(f) promulgated by the Bankruptcy Reform Act of 1994. 11 U.S.C. §522(f)(2)(A); In re Thomsen, 181 B.R. 1013, 1015 (Bankr. M.D. Ga. 1995). When the amount due on account of the liens sought to be avoided, all other liens on the property and the amount of the debtor’s exemption “exceeds the value that the debtor’s interest in the property would have in the absence of any liens” the debtor’s exemption is impaired. 11 U.S.C. §522(f)(2)(A)(i) thru (iii). Thus, in order for the court to determine if a judgment lien impairs an exemption to which a debtor may be entitled, in addition to identifying the property subject to the judicial lien, the motion must provide information concerning the value of the property, the amount due on account of all liens against it, the amount of the liens to be avoided,

and the amount of the exemption claimed by the debtor. 11 U.S.C. §522(f)(2)(A); see also, Thomsen, 181 B.R. at 1015-16.

While the debtor's motions state that he is entitled to avoid the liens, the motions do not provide any information concerning the value of the property, the amount due on any liens secured by the property, or any information concerning the amount of the exemption actually claimed by the debtor. Without this information the court does not have sufficient facts before it to determine whether the liens in question impair a claimed exemption. As such, the motions fail to state a cognizable claim for lien avoidance pursuant to §522(f)(1). Furthermore, the notices of the motion and opportunity to object which was served on creditors and parties in interest does not comply with the local rules of this court. See, N.D. Ind. L.B.R. B-2002-2. The certificate of service accompanying the notices indicates that the notices were served in care of the creditor whose lien is sought to be avoided. The creditors, debtor, trustee and U.S. Trustee are also entitled to service of the notice and opportunity to object. N.D. Ind. L.B.R. B-9013-2(c). Furthermore, First Federal Savings Bank, one of the lienholders, is an insured depository institution and it was not served by certified mail as required by Bankruptcy Rule 7004(h). In addition, the notices fail to sufficiently identify the property subject to the liens.

Consequently, not only are the motions deficient, but creditors and parties in interest have not been given appropriate notice of the motions and the opportunity to object thereto.

IT IS THEREFORE ORDERED that the motions to avoid judicial liens filed by the debtor on August 18, 2005, are denied, without prejudice.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court